

Message Text

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INFO AMEMBASSY PARIS PRIORITY

AMEMBASSY LONDON

USMISSION IAEA VIENNA

S E C R E T STATE 302838

EXDIS

E.O. 11652: GDS

TAGS: PARM, TECH

SUBJECT: BORSIG CASE

REFS: (A) BONN 20433; (B) STATE277354;(C) STATE
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1. THE FOLLOWING IS IN RESPONSE TO REQUEST IN REFTL (A)
FOR AN ACCOUNT OF RELEVANT DISCUSSIONS AT THE WORKING GROUP
MEETING HELD IN LONDON ON DECEMBER 1 AND 2. NO MINUTES OF
THOSE MEETINGS WERE KEPT, AND THIS ACCOUNT SIMPLY REFLECTS
THE RECOLLECTION OF THE CHAIRMAN AND ANOTHER U.S. REP.

2. THE TASK OF THE WORKING GROUP WAS TO SEEK TO REACH CON-
SENSUS ON A TRIGGER LIST CONSISTING OF TWO PARTS: PART A,
A TRIGGER LIST OF HARDWARE ITEMS THAT WOULD NOT BE EXPORTED
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UNLESS THE RECIPIENT COUNTRY ACCEPTED SAFEGUARDS ON NUCLEAR
MATERIAL USED, PROCESSED OR PRODUCED WITH THE USE OF SUCH
ITEMS, AND PART B, AN ANNEX DESIGNED TO HELP IMPLEMENT THE
PARAGRAPH OF THE GUIDELINES DEALING WITH THE EXPORT OF TECH-

NOLOGY FOR ENRICHMENT, REPROCESSING AND HEAVY WATER FACILITIES. PART A WAS TO BE BASED ON THE ZANGGER COMMITTEE LIST, WITH SUCH MODIFICATIONS AS MIGHT BE AGREED UPON.

3. AS BACKGROUND, THE ZANGGER COMMITTEE LIST WAS QUITE SPECIFIC WITH RESPECT TO CERTAIN REACTOR-RELATED ITEMS, IN-

CLUDING HEAVY WATER, BUT CONTAINED THE FOLLOWING MORE GENERAL ITEMS: "PLANTS FOR THE REPROCESSING OF IRRADIATED FUEL ELEMENTS, AND EQUIPMENT ESPECIALLY DESIGNED OR PREPARED THEREFOR;" "PLANTS FOR THE FABRICATION OF FUEL ELEMENTS;" "EQUIPMENT, OTHER THAN ANALYTICAL INSTRUMENTS, ESPECIALLY DESIGNED OR PREPARED FOR THE SEPARATION OF ISOTOPES OF URANIUM." IT DID NOT INCLUDE HEAVY WATER PRODUCTION PLANTS. BUT THERE WAS AN ANNEX THAT SOUGHT TO CLARIFY SOME OF THE PRECEDING ITEMS. IN THE CASE OF ISOTOPE SEPARATION PLANT EQUIPMENT THIS CLARIFICATION CONSISTED ONLY OF THE STATEMENT THAT THIS CATEGORY "INCLUDES EACH OF THE MAJOR ITEMS OF EQUIPMENT ESPECIALLY DESIGNED OR PREPARED FOR THE SEPARATION PROCESS."

4. IN ADVANCE OF THE DECEMBER 1 MEETING OF THE WORKING GROUP, THE CHAIRMAN CIRCULATED TO EACH OF THE PARTICIPATING COUNTRIES A DRAFT OF EACH OF THE TWO PARTS. PART A OF THIS DRAFT (REFTEL B) ESSENTIALLY REPRODUCED THE ZANGGER COMMITTEE LIST WITH A FEW ADDITIONS, INCLUDING THE FOLLOWING: "PLANTS FOR THE PRODUCTION OF HEAVY WATER, DEUTERIUM AND DEUTERIUM COMPOUNDS AND EQUIPMENT ESPECIALLY DESIGNED OR PREPARED THEREFOR." THE DRAFT DID NOT INCLUDE ANY CLARIFICATION OF THIS ITEM IN THE ANNEX TO PART A.

5. ANOTHER TASK OF THE WORKING GROUP WAS TO DEFINE "MAJOR CRITICAL COMPONENTS" OF ENRICHMENT, REPROCESSING, AND HEAVY WATER PLANTS FOR PART B. THE PURPOSE OF THIS DEFINITION WAS QUITE DIFFERENT FROM THE TRIGGER LIST IN PART A, SINCE THE CONSEQUENCES WERE QUITE DIFFERENT. THE ITEMS IN PART A WERE NOT TO BE EXPORTED WITHOUT REQUIRING SAFEGUARDS ON ANY NUCLEAR
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CLEAR MATERIAL WHOSE USE, PROCESSING, OR PRODUCTION WAS DIRECTLY FACILITATED BY THE SPECIFIC ITEMS EXPORTED. THE LIST OF "MAJOR CRITICAL COMPONENTS" IN PART B WAS DESIGNED TO HAVE THE CONSEQUENCE THAT ANY FACILITY OF THE SAME GENERAL TYPE, OR INCORPORATING MAJOR CRITICAL COMPONENTS OF THE SAME GENERAL TYPE, BUILT IN THE RECIPIENT COUNTRY FOR AN AGREED PERIOD OF SOME 20 YEARS WOULD BE DEEMED TO BE BASED ON TECHNOLOGY TRANSFERRED BY THE SUPPLIER AND HENCE WOULD HAVE TO BE UNDER SAFEGUARDS. IT SEEMED CLEAR THAT THIS LIST OF "MAJOR CRITICAL COMPONENTS" IN PART B WOULD HAVE TO BE MORE RESTRICTED THAN THE ITEMS IN PART A, WHICH INCLUDED EQUIPMENT ESPECIALLY DESIGNED OR PREPARED FOR ENRICHMENT, REPROCESSING AND HEAVY WATER PRODUCTION.

6. IN THE DRAFT OF PART B CIRCULATED IN ADVANCE OF THE MEETING (RE TEL C) THE FOLLOWING DEFINITION OF "MAJOR CRITICAL COMPONENTS" OF HEAVY WATER PRODUCTION FACILITIES WAS PROPOSED: "SIEVE TRAYS AND/OR BUBBLE CAP TRAYS OF STAINLESS STEEL AT LEAST 50 SQUARE FEET IN AREA; AND PROCESS CONTROL

INSTRUMENTATION SPECIALLY CONFIGURED FOR CONTROL OF HEAVY WATER PRODUCTION FACILITIES."

7. AT THE DECEMBER 1 MEETING OF THE WORKING GROUP, THE INCLUSION IN PART A OF THE LANGUAGE DESCRIBED IN PARA 4 ABOVE MET GENERAL APPROVAL.

8. THERE WAS CONSIDERABLE DISCUSSION OF THE PROPOSED DEFINITIONS OF "MAJOR CRITICAL COMPONENTS" FOR PART B. THE FRENCH DELEGATE (PETIT) SAID HE THOUGHT THE PROPOSALS WERE MUCH TOO EXTENSIVE FOR THAT PURPOSE, BUT THAT WE SHOULD CONSIDER WHETHER THE COMPONENTS THAT HAD BEEN PROPOSED FOR INCLUSION IN THIS DEFINITION SHOULD NOT BE SPECIFICALLY INCLUDED IN PART A. THE WORKING GROUP THEN PROCEEDED TO LOOK AT THE COMPONENTS OF ENRICHMENT PLANTS WHICH THE DRAFT OF PART B HAD PROPOSED FOR INCLUSION IN THE DEFINITION OF "MAJOR CRITICAL COMPONENTS". AFTER SOME DISCUSSION, THEY DECIDED TO INCLUDE A NUMBER OF THESE IN THE ANNEX TO PART A, TO CLARIFY WHAT SHOULD UNARGUABLY BE INCLUDED IN "MAJOR ITEMS OF EQUIPMENT ESPECIALLY DESIGNED OR PREPARED FOR THE SEPARATION PROCESS." AS REPORTED IN REFTEL D, THE MOST
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CONTROVERSIAL ITEMS ON THIS LIST WERE COMPRESSORS AND COMPRESSOR SEALS, THE ARGUMENT BEING OVER WHETHER THEY COULD BE EXPORTED FOR NON-NUCLEAR PURPOSES AND WHETHER A CUSTOMS INSPECTOR COULD DISTINGUISH THEM FROM COMPRESSORS FOR OTHER PURPOSES. THE FRENCH DELEGATE SAID HE THOUGHT IT ESSENTIAL THAT THESE TWO TESTS BE MET, AND POINTED OUT THAT A RULE WHICH COULD NOT BE ENFORCED, OR A RULE (SUCH AS REQUIREMENT OF AN END USE STATEMENT) WHICH MIGHT LEAD TO PREVARICATION, EVASION, OR WITHHOLDING OF INFORMATION ON ACTUAL END USE, WOULD NOT BE SATISFACTORY. SEVERAL DELEGATES (PROBABLY INCLUDING THE GERMANS) INDICATED THAT THEY THOUGHT THERE WAS CONSIDERABLE MERIT IN THESE OBSERVATIONS. ONE OF THE U.S. DELEGATES THEN NOTED THAT THE RATIONALE BEHIND THE ZANGGER COMMITTEE LIST, INCLUDING WHETHER OR NOT THE ITEM MUST BE UNIQUE TO NUCLEAR USES, AND THE RELEVANCE OF END USE, HAD NEVER BEEN DEFINITELY SETTLED, AND THAT CLEARLY THE WORKING GROUP COULD NOT SETTLE SUCH A FUNDAMENTAL MATTER IN THIS TWO-DAY MEETING. HE ALSO POINTED OUT THAT UNIQUENESS REQUIREMENT COULD LEAD TO DEFEATING OBJECTIVE OF TRIGGER LIST THROUGH ASSERTION OF MINOR OR TRUMPED UP NON-NUCLEAR USES.

9. THE GERMANS, FRENCH AND JAPANESE ALL HAD RESERVATIONS OVER WHETHER COMPRESSORS AND COMPRESSOR SEALS FOR ENRICHMENT PLANTS MET THE TEST OF BEING "SPECIALLY DESIGNED OR PREPARED FOR" SUCH PLANTS, AND SAID THEY WOULD HAVE TO CHECK BACK WITH THEIR CAPITALS. THEY DID SO AND ON DECEMBER 3 TELEPHONED THE CHAIRMAN TO THE EFFECT THAT THEY COULD ACCEPT THE INCLUSION OF THESE ITEMS.

10. THE WORKING GROUP THEN APPROACHED THE REVISION OF THAT ITEM ON THE ANNEX TO PART A THAT SOUGHT TO CLARIFY WHAT CONSTITUTED "EQUIPMENT ESPECIALLY DESIGNED OR PREPARED FOR" REPROCESSING PLANTS.

11. FOLLOWING THIS DISCUSSION, THE QUESTION AROSE WHETHER THERE SHOULD BE A CORRESPONDING CLARIFICATION IN THE ANNEX TO PART A OF WHAT WAS MEANT BY "EQUIPMENT ESPECIALLY DESIGNED OR PREPARED FOR" HEAVY WATER PRODUCTION PLANTS. IN THIS CONNECTION, THE U.S. DELEGATE URGED INCLUSION OF THE SPECIAL TRAYS MENTIONED IN PARA 6 ABOVE, AND THE CANADIAN
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REPRESENTATIVE POINTED OUT THAT THE LARGE COMPRESSORS FOR SUCH PLANTS WERE VITAL TO THEIR OPERATION, SPECIALLY DESIGNED, AND SHOULD BE CONSIDERED. WHILE THERE WAS NO DETAILED CONSIDERATION OF THIS ITEM ON ITS MERITS, IT WAS CLEAR FROM THE PRECEDING CONTROVERSY OVER COMPRESSORS FOR ENRICHMENT PLANTS THAT THIS WOULD BE CONTROVERSIAL AND AT LEAST WOULD REQUIRE DETAILED CONSIDERATION IN CAPITALS. IT SEEMED CLEAR THAT IT WOULD NOT BE POSSIBLE TO REACH CONSENSUS AT THIS TWO-DAY MEETING ON A CLARIFICATION OF WHAT SHOULD BE CONSIDERED EQUIPMENT ESPECIALLY DESIGNED OR PREPARED FOR HEAVY WATER PRODUCTION PLANTS, AND SINCE THE WORKING GROUP WAS MINDFUL OF ITS MANDATE TO COMPLETE ITS WORK AT THESE SESSIONS, IT WAS GENERALLY AGREED NOT TO ATTEMPT TO ADD SUCH A CLARIFICATION BUT TO COVER HEAVY WATER PRODUCTION PLANTS AND COMPONENTS ONLY BY THE GENERIC FORMULATION QUOTED IN PARA 4 ABOVE.

12. WITH RESPECT TO SEVERAL ITEMS ON WHICH IT WAS NOT POSSIBLE TO REACH CONSENSUS ON EXPLICIT EXCLUSION AT THIS TIME, IT WAS AGREED THAT GOVERNMENTS SHOULD REVIEW THEIR POSITIONS IN COMING YEAR.

13. IN LIGHT OF THIS ACCOUNT, WE HAVE THE FOLLOWING COMMENTS ON THE REPORT IN REFTEL A OF WHAT THE GERMANS RECALLED OF THE WORKING GROUP DELIBERATIONS: (I) WE AGREE WITH THE CONCLUSION IN PARA 2 THAT "THERE WAS NO CONSENSUS THAT COMPRESSORS FOR A HEAVY WATER PLANT WOULD FIT WITHIN THE ESPECIALLY DESIGNED OR PREPARED CATEGORY," BUT THERE WAS NO EXPLICIT DECISION THAT THEY WOULD NOT. (II) THE GERMAN PARTICIPANTS' RECOLLECTION THAT THE PHRASE "EQUIPMENT ESPECIALLY DESIGNED OR PREPARED THEREFOR" WAS FIRST

INSERTED AT THE WORKING GROUP MEETING BUT" ONLY TO PROVIDE
FOR POSSIBLE NEW TECHNOLOGY DEVELOPMENTS IN THE FUTURE"
DOES NOT SQUARE WITH OUR RECOLLECTION. WE BELIEVE THAT
THEY MAY BE CONFUSING THIS WITH THE DECISION TO ADD A NOTE
TO THE DEFINITION OF "MAJOR CRITICAL COMPONENTS" IN PART B
OF THE TRIGGER LIST IN ORDER TO COVER FUTURE TECHNOLOGICAL
DEVELOPMENTS, BUT NOT TO AFFECT THE TYPES OF TECHNOLOGY
SPECIFICALLY ENUMERATED IN THAT DEFINITION (REFTEL C AND

D); (III) WE DISAGREE WITH THE COMMENT IN PARA 5 REFTTEL A
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THAT THE WORKING GROUP "EXPLICITLY REJECTED THE CONCEPT OF
IDENTIFIED END USE", ALTHOUGH THE WORKING GROUP CERTAINLY
GAVE NO ENDORSEMENT TO THAT CONCEPT AND SEVERAL MEMBERS
DISCUSSED POTENTIAL DIFFICULTIES ASSOCIATED THEREWITH.

14. THUS WE DO NOT BELIEVE THE POSITION WE ARE RECOMMEND-
ING IN THE BORSIG CASE -- WHERE WE HAVE ACTUAL KNOWLEDGE
OF THE INTENDED END USE -- IS IN DIRECT CONFLICT WITH ANY
DECISION TAKEN BY THE WORKING GROUP. KISSINGER

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